

# Congress of the United States

Washington, DC 20515

July 14, 2023

The Honorable Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20004

Dear Administrator Regan:

We are writing to provide comment on the Environmental Protection Agency's (EPA) proposed rule regarding coal ash legacy surface impoundments ("CCR legacy proposal"). We commend the agency for expanding federal protections for coal ash and are grateful to see more requirements for monitoring and cleanup that have the potential to greatly benefit communities living closest to coal plants. However, we are deeply concerned about the ongoing harms of coal ash pollution due to water contamination from legacy surface impoundments and landfills, and the potential for catastrophic spills. We urge EPA to finalize the CCR legacy proposal, strengthen the proposed rule to require cleanup of all inactive dumpsites, and ensure industry compliance by taking compliance and enforcement actions to identify and address rule violations.

What's more, the impact of these pollutants disproportionately affects communities of color, which are often situated near coal plants due to historical discrimination. Although the 2015 Coal Ash Rule was a crucial step in protecting communities across the United States from toxic coal ash, it exempted hundreds of ponds and landfills from federal regulations. A 2022 report that examined industry-provided data revealed that 91 percent of regulated coal plants have leachate that is contaminating groundwater at levels exceeding federal safety standards<sup>1</sup>. This pollution contains heavy metals, such as arsenic, boron, cobalt, and lithium.<sup>2</sup> As you know, these toxic pollutants have detrimental effects on human health, including heightening risk for various cancers, heart disease, liver damage, and neurological and developmental harms.

In fact, seventy percent of coal ash dumpsites are located in low-income communities and/or Black, indigenous, or other communities of color.<sup>3</sup> These populations need and deserve the strongest safeguards. As long as there remain loopholes in the Coal Ash Rule, EPA is allowing industry to avoid cleanup and remediation, leaving our most vulnerable communities exposed to ongoing pollution. While we support EPA's CCR legacy proposal and are grateful for the expansion of federal regulations for coal ash waste, we urge you to enhance the rule by broadening protective measures to cover all coal ash dumpsites – whether or not they stopped receiving waste before October 19, 2015, and by crafting regulations to address coal ash used as fill for projects in our neighborhoods like playgrounds and schools.

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<sup>1</sup> Report can be found at <https://earthjustice.org/press/2022/new-report-most-power-plants-violating-federal-rules-mandating-cleanup-of-toxic-coal-ash-dumps>

<sup>2</sup> Environmental Integrity Project & Earthjustice, *Poisonous Coverup: The Widespread Failure of the Power Industry to Clean Up Coal Ash Dumps* (Nov. 3, 2022), *available at* [https://earthjustice.org/sites/default/files/press/2022/coal-ash-report\\_poisonous-coverup\\_earthjustice.pdf](https://earthjustice.org/sites/default/files/press/2022/coal-ash-report_poisonous-coverup_earthjustice.pdf)

<sup>3</sup> The 746 dumps are located at 302 plants, 68 percent of which are in areas where the population surrounding the plant has a higher incidence of low-income residents and populations of color when compared to the state average. See Earthjustice database: <https://earthjustice.org/coalash/data-2022>.

Finally, we implore EPA to take enforcement action when violations occur. It is troubling that almost every coal plant in the United States is violating requirements of the Coal Ash Rule. Nearly a decade after the first-ever federal safeguards were put in place to protect human health and the environment from coal ash waste, we continue to see rampant contamination. Our communities – particularly environmental justice communities – bear the burden. For decades, industry has used the cheapest and most dangerous disposal methods for coal ash. We urge EPA to address this, and to ensure federal environmental protections are appropriately administered and enforced. We strongly support the tougher safeguards in the CCR legacy proposal but urge you to finalize a rule addressing *all* coal ash and to ensure these contaminated sites are cleaned up, including thorough enforcement action to protect the well-being of Americans.

Sincerely,



Henry C. "Hank" Johnson, Jr.  
Member of Congress



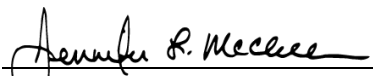
Bradley Scott Schneider  
Member of Congress



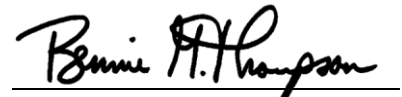
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Steve Cohen  
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Jennifer L. McClellan  
Member of Congress



Bennie G. Thompson  
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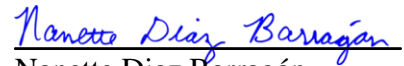
Barbara Lee  
Member of Congress



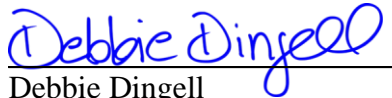
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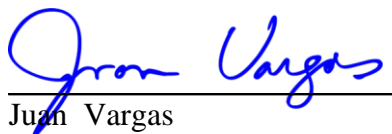
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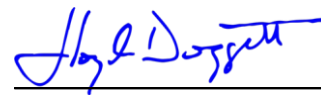
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Earl Blumenauer  
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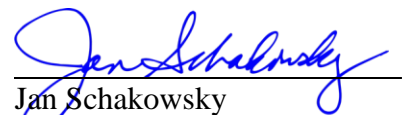
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Lloyd Doggett  
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Dina Titus  
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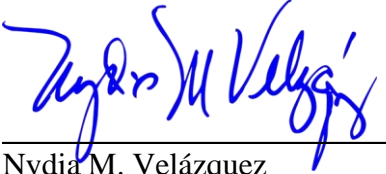
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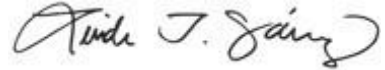
Jerrold Nadler  
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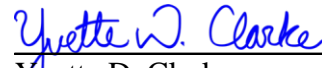
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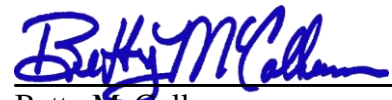
Sara Jacobs  
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Teresa Leger Fernández



Betty McCollum

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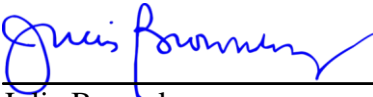
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James P. McGovern  
Member of Congress



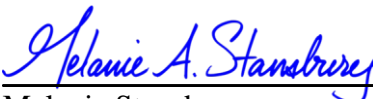
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Eleanor Holmes Norton  
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Gerald E. Connolly  
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Member of Congress



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Josh Gottheimer  
Member of Congress